



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

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Docket No: 3773-22  
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although you did not file your application in a timely manner, the statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 26 September 2022. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, to include the Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). The Board also reviewed an Advisory Opinion (AO) from a qualified mental health professional and your response to the AO.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the U.S. Navy Reserve and completed two periods of honorable service. The first ending on 21 July 1985; the second ending on 25 November 1988. On 9 February 1989, you reenlisted and began a third period of active duty. On 5 November 1991, you received

administrative counseling retaining you in the Naval service but documenting your deficiency as evidenced by your unauthorized absence (UA) from your appointed place of duty on 22 October 1991, as a result of being in civilian confinement. You were advised that further deficiencies in your performance and/or conduct would make you eligible for administrative discharge. On 8 October 1992, you received nonjudicial punishment (NJP) for disobeying a lawful order, making a false official statement to the XO, and adultery. As a result, on 29 October 1992, you were notified of your impending administrative separation by reason of misconduct as evidenced by commission of a serious offense (COSO), at which time you elected your right to consult with military counsel but waived your right to present your case before an administrative discharge board. Your commanding officer then recommended you for separation with an Other Than Honorable (OTH) characterization of service. On 12 November 1992, the separation authority approved the recommendation and directed you be discharged with an OTH characterization of service by reason of COSO. On 9 December 1992, you were so discharged.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge and your contentions that you incurred PTSD and other mental health concerns during military service due to personal problems. In addition, you contend that: (1) you were married to a drug addict wife who caused you numerous problems in your home and work life, (2) some of your peers took sympathy on your former wife and made things difficult for you, (3) your former wife became pregnant from another man she met at rehabilitation, (4) your former wife refused to sign divorce papers because she was using your insurance during her pregnancy, (5) you were removed from your assignment and placed on damage control maintenance indefinitely but were still having problems with your former wife, (6) you met a lady who was experiencing something similar to your situation with her ex and you both fell in love, (7) one of your peers did not like this and you were “brought up on adultery and disobeying a lawful order from an E-7” charges, (8) you were sent to NJP and your peers “made it out like I was the worst sailor ever,” (9) you were given an administrative discharge with an OTH for COSO, (10) you recently submitted a request for counseling via the Department of Veterans Affairs (VA), and (11) you believe a discharge upgrade would alleviate your deep resentment and regret. For purposes of clemency consideration, the Board noted you provided advocacy letters but no supporting documentation describing post-service accomplishments.

Based on your assertion that you incurred PTSD and other mental health concerns (MHC) during military service, which might have mitigated the circumstances that led to your discharge character of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with the AO. The AO stated in pertinent part:

In August 1989, he received a psychiatric evaluation due to “substantiated spousal abuse,” in which no mental health condition was diagnosed, and a “Marital Problem” was noted. In October 1991, he was evaluated by mental health after “his wife accused him of spouse abuse and he was arrested, charged, and jailed for the night.” “Marital Discord” was noted and no other mental health condition was diagnosed. In December 1991, he was referred for a mental health evaluation as he was “suspected to physically abuse his wife who is a prescription drug

addict.” No mental health condition was diagnosed, “Recurrent Marital Problems” were noted, and he was deemed psychiatrically fit for full duty.

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He was evaluated on multiple occasions during military service, with no diagnosis assigned. He has provided no medical evidence to support his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or a nexus with his misconduct. Additional records (e.g., post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, “it is my considered clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD or another mental health condition.”

On 20 September 2022, the Board received your rebuttal in response to the AO in the form of your statement, divorce decree, and the birth certificate of your ex-wife’s son.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO that there is insufficient evidence that your misconduct may be attributed to PTSD or another mental health condition. Additionally, character of service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your military behavior/conduct average was 1.0 and your overall trait average was 2.2. An average of 3.0 in military behavior/conduct and an overall trait average of 2.8 were required at the time of your separation for a fully honorable characterization of service. Furthermore, the Board considered the comments from the commanding officer that stated, “[Petitioner] has received numerous counseling sessions regarding his personal life which was reflected in his performance. His blatant disregard of carrying out a direct order, lying about completing PQS (Personal Qualification Standards), and lying to the Executive Officer [XO] shows me that there is no potential for further service for this individual.” In the Board’s opinion, this was strong evidence that your conduct issues went well beyond the relationship related behavior that you rely upon as mitigation. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans’ benefits, or enhancing educational or employment opportunities. However, the Board noted that you qualify for VA benefits based on your previous Honorable enlistment periods. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. While the Board commends your post-discharge good character, after applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an

upgraded characterization of service. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

10/13/2022

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